REMARKS/ARGUMENTS

Claims 1-37 are pending in the application. Reconsideration is requested in view of the above amendments and the following remarks.

Applicant is pleased that the Examiner has considered that the prior amendments have overcome the section 101 rejection.

Claims 1-4, 6-8, 10, 11, 18-19, 21-25, 34 and 36 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,088,803 ("Tso") in view of US Patent application Engel. This rejection is respectfully but strenuously traversed and reconsideration and a withdrawal of the rejection is hereby respectfully requested.

The Applicant's invention is not disclosed or suggested by the cited references and should be patentable. The Examiner contends that Tso discloses a method and apparatus including a protocol parser, a protocol scanner, and a proscribed code scanner including a scanning means and an indicator whereby the protocol parser intercepts instant messaging or peer-to-peer code on a communications channel and transmits said code to said proscribed code scanner through said protocol scanner (referring to col. 6, lines 10-24 of Tso and contending that the parser performs the functions of both the protocol parser and the protocol scanner). Tso fails to teach, disclose or suggest the Applicant's present invention, alone or when combined with Engel as proposed in the Office Action.

Previously, the Examiner, on pages 6-7 of the May 13, 2005 Office Action appears to acknowledge distinctions made by Applicant, but considers the claim language to not include the specific description referenced to by Applicant. Applicant previously amended each of the independent claims in order to recite that the protocol parser discriminates among different protocols.

Applicant's claims also recite that the protocol parser accepts instant messaging or peer-to-peer code on a communications channel and transmits or transfers the code... (See claims 1-17). Claims 18-37 also recite intercepting instant messaging or peer-to-peer code on a communications channel.

Applicant previously pointed out that reliance on Tso was misplaced, because what Tso actually describes is as follows:

> As illustrated in FIG. 5, transcoding server 34 may include a transcoder 20 with a parser 22 and a plurality of transcode service providers 24. Parser 22 is configured to act upon data received by transcoder 20, such as a request for a network object generated by client device 12 or a reply to such a request provided by a content server or other device on network 18. In this particular example, parser 22 is responsible for selectively invoking one or more of transcode service providers 24 based upon a predetermined selection criterion. With reference to FIG. 1 and FIG. 4, virus checker 5 may be implemented, for example, as a transcoding service provider 24. Persons skilled in the art will recognize, however, that the functionality of transcoding service provider 24 may also be implemented in a router, a networking stack, or any other suitable network device.

According to Tso's disclosure, the parser manages the transcoding of data to be transmitted from transcoding service provider.

Applicant's invention is distinguishable, in that the present invention recites:

> An apparatus for processing code comprising: at least one electronic device component for intercepting, examining and controlling code, said electronic device component being

11

provided with a protocol parser *capable of discriminating among different protocols implemented on top of the transport layer*; and, a proscribed code scanner; whereby said protocol parser intercepts instant messaging or peer-to-peer code on a communications channel and transmits said code for review by said proscribed code scanner, said protocol parser being provided to parse protocols on top the transport layer.

Applicant previously pointed out that Applicant's claims refer to a communications channel, whereas Tso refers to a server/network communications link 16. Applicant also noted that it is one thing to intercept the stream as the Applicant's invention claims and does, but another thing to transcode content based on a predetermined selection criterion (see Tso col. 6 lines 42-43). In particular, Tso merely discloses a parser for use in connection with HTTP. One would not gain from Tso's HTTP disclosure to implement a protocol parser in the first place. Again, that only comes from Applicant's current and priority disclosures (and not the cited art). Tso does not mention using a parser to parse protocols on top of the transport layer, as Applicant discloses and claims. For these reasons alone, even the further attempt to combine Engel with Tso still does not teach or disclose Applicant's.

Now the rejection includes a secondary reference, namely, Engel. The rejection now contends that it would have been obvious to combine Engel with Tso in order to arrive at the Applicant's present invention. The reasons set forth in the Office Action are that one of ordinary skill in the art would be led to use the protocol parser of Engel as the protocol parser of Tso. The Office Action further refers to Engel at col. 19, lines 35-63, and contends that the motivation would be to allow statistics, state tracking and tracing operations to be performed.

12

Applicant responds to the rejection of Tso and the additional reference of Engel. For the reasons set forth in Applicant's prior response and the reasons set forth herein, the cited references still do not teach or disclose the Applicant's present invention.

Applicant previously pointed out distinctions between the Tso reference and Applicant's claimed invention. In particular, Applicant's invention relates to and claims interception of instant messaging on a communications channel. The protocol parser according to the Applicant's present invention is placed so as to intercept code passing through a communications channel. The intercepted code is then sent by the parser to a protocol scanner. In addition, Applicant's invention provides that it may operate by using a protocol parser that may be placed on a client, server, a peer, and/or other system components. (See specification [0024].)

Tso, on the other hand, discloses a transcoding server 34 which is intermediate between the network client 12 and the network 18. Tso appears to relate to downloading of files, whereas Applicant's invention recites handling a communications stream on a communications channel.

As Applicant previously pointed out, it is one thing to intercept the stream as the Applicant's invention claims and does, but another thing to transcode content based on a predetermined selection criterion (see Tso col. 6 lines 42-43). In particular, Tso merely discloses a parser for use in connection with HTTP. Tso does not mention using a parser to parse protocols on top of the transport layer, as Applicant discloses and claims.

The current Office Action therefore cites to and relies on the additional reference, namely, Engel, for its alleged teaching of a protocol parser that the Office Action

considers discriminates between different protocols implemented on top of the transport layer, citing to col. 19, line 53 through col. 20, line 28, and Figs. 2 and 19).

The specific language referred to in Engel refers to not a parser, but rather, a number of protocol-specific parsers. Again, this would not appear to be able to perform the features of the Applicant's claimed invention.

Applicant claims:

An apparatus for processing code comprising: at least one electronic device component for intercepting, examining and controlling code, said electronic device component being provided with *a protocol parser capable of discriminating among different protocols implemented on top of the transport layer*; and, a proscribed code scanner; whereby said protocol parser intercepts instant messaging or peer-to-peer code on a communications channel and transmits said code for review by said proscribed code scanner, said protocol parser being provided to parse protocols on top the transport layer.

It would appear that what Engel discloses is user selected protocols and not Applicant's claimed inventive feature where the protocol parser is capable of discriminating among different protocols on top of the transport layer. If the user is presented with the selections to be made according to Engel's disclosure, it would not appear that the Applicant's feature where the parser discriminates the protocol would be consistent with Engel, or combining it with Tso.

The Office Action, however, seeks to combine Engel with Tso. However, Tso is cited for allegedly disclosing a parser that performs the functions of the protocol parser. The Office Action acknowledges that Tso fails to disclose a protocol parser that is capable of discriminating among different protocols implemented on top of the transport layer. But Engel, which is relied on to fill the Tso deficiency, fails to teach, suggest or disclose the present invention. According to a review of Engel, what appears to be disclosed are a number of user selected protocols selected from a pop-up menu.

Engel does not appear to disclose a parser on top of the transport layer, but rather appears to suggest and disclose to one of ordinary skill in the art to place "on top of" the transport layer, a network layer. It would not appear from the cited references that Applicant's claimed invention of providing a protocol parser on top of the transport layer would be taught or disclosed.

Even if the Office Action were to be interpreted to be contending that Engel is somehow teaching or disclosing a parser on top of a transport layer, this would still not render the presently claimed invention obvious. Tso and Engel do not reveal a teaching or suggestion, motivation or other reason to combine the references. The Office Action mentions a reason for the proposed combination of these references as being to allow statistics, state tracking and tracing operations to be performed. This reason is insufficient to render the present invention obvious based on a combination of Tso and Engel.

First, Applicant disagrees that this would motivate one of ordinary skill in the art to modify Tso. As Applicant explained above, Tso is for a file download and transcode service, and not streams. Changing Tso to become (if that were even possible) or attempt to become what Applicant discloses and claims as its invention is not supported by the reference.

Second, any motivation or suggestion to make the combination does not come from the references themselves, but from a hindsight look at Applicant's own disclosure. One of ordinary skill in the art is not led to make the Applicant's claimed invention based on what one reviews in the cited references deemed to be combinable.

Again, the combination and modification of the references are not what the Tso

reference even relates to, nor would there be motivation to combine Engel with Tso.

Tso is cited for *its disclosure of a parser and transcode service*. That very

disclosure in Tso relates to an http remote proxy.

Moreover, the reference in Tso at col. 5, lines 27-43, relied on in the rejection of

Applicant's claims 8, 10 and 24, is to a different embodiment. At that citation in Tso, the

parser 22, has not even been mentioned. For the Office Action to assert that the portion

of Tso, at col. 5, lines 27-43, would relate to a parser configuration means for configuring

interception parameters, does not provide a disclosure or suggestion of the Applicant's

present invention.

In addition, Applicant's present invention is further distinguishable, and provides

a further reason why one of ordinary skill in the art would not have been led to combine

the Tso and Engel disclosures. Applicant, in his specification, recites the following

features:

> [0064] It should be noted that more than one instance of the
> embodiment will be utilized if the user has more than one application
> running and/or more than one communications channel opened. For
> example, if a user opens an instant messaging application over a
> network card communication channel as well as a sendmail application
> over a network card communication channel two code streams will be
> created, both using TCP. Both will be intercepted according to the
> process of the preferred embodiments. Moreover, if channels are
> opened using other protocols at the Transport layer, or other protocols
> at other layers, embodiments of the present invention can be used to
> intercept those communications, with an appropriate kernel module.

> [0065] Of course, any configuration parameters are not limited to
> predetermined parameters. For example, the interception parameters of

16

the intercept module, protocol scanner and the proscribed code scanner may be configured in various ways in various embodiments. Moreover, the user may configure and reconfigure the parameters as desired. In yet other embodiments, there may need to be no interception parameters-interception can be turned off--or no predetermination of interception parameters. For example, a user may decide to intercept all code, or the embodiment could request parameters as code is being transferred or could request an interception decision as the code is being transferred. Of course, in yet other embodiments, the choice of predetermined, non-predetermined, or no interception parameters, and what parameters to change could be offered to either or both end-users or network administrators.

[0066] Of course, other embodiments may be configured differently. For example the protocol scanner may be written as one or more STREAMS modules, and the connections to and from the intercept module and the proscribed code scanner would be modified appropriately.

It would appear that the present invention would not be taught or suggested by Tso, even if the combination were made with Engel. Engel is cited for a disclosure which refers to a protocol selection pop-up. Applicant's invention refers to a method and apparatus which can handle multiple streams. Tso is not directed to streams, but rather appears to be for file downloads, for example, a data object to be downloaded. Applicant's invention refers to the ability to handle more than one communications channel opened, such as, for example, an instant messaging application over a network card communication channel as well as a sendmail application over a network card communication channel. Here, Applicant's invention can handle the two code streams that will be created (both using TCP), and, accordingly, the code streams will be intercepted according to the process of the preferred embodiments.

In addition, it would not have been obvious to seek to modify Tso, because one would not even have the same issue to address.

17

For the above reasons, the present invention is not disclosed or suggested by the cited references.

Claim 9 stands rejected under 35 USC 103(a) as being unpatentable under the modified Tso et al. reference and Engel system as applied above, and further in view of U.S. 6,771,949 (Corliss). This rejection is respectfully but strenuously traversed and reconsideration and a withdrawal of the rejection are hereby respectfully requested.

Applicant's invention is distinguishable over the cited references. The Examiner contends that modified Tso et al. and Engel disclose an apparatus for processing code comprising a protocol parser capable of discriminating among different protocols implemented on top of the transport layer, (citing to Tso and Engel as previously discussed) and a proscribed code scanner, whereby said protocol parser intercepts messaging code on a communications channel and transmits said code for review by said proscribed code scanner and said protocol parser being provided to parse protocols on top of transport layer. The Examiner further contends that Tso and Engel disclose intercepting codes that are commonly passed over the internet.

However, the Office Action admits that Tso and Engel even if combined together, still fail to disclose that messaging code is short messaging code. The Examiner, however, attempts to fill this deficiency by combining a further reference, namely Corliss. Applicant's invention, as recited in claim 9, is not obvious in view of the cited references.

First, for the reasons set forth above Tso and Engel, fail to disclose or suggest the Applicant's present invention.

Second, in addition, one looking at Tso's download of files would not seek to combine Corliss or modify Tso in the manner suggested in the Office Action with regard to claim 9. Moreover, the reference to short messages appears unrelated to Tso and Engel and does not supply any reason or motivation to modify Tso and Engel in the manner suggested in the Office Action.

Third, Applicant submits that Corliss was issued after Applicant's filing date, and therefore, would not have rendered the invention obvious. The rejection therefore, is traversed for this reason, and allowance of claim 9 is respectfully requested.

For the above reasons, and these additional reasons, claim 9, is not obvious in view of the cited references. Reconsideration and a withdrawal of the rejection with respect to claim 9 is respectfully requested.

Claims 5, 12, 15-17, 20, 26-29, 32-33, and 35 stand rejected under 35 USC 103(a) as being unpatentable over modified Tso et al. and Engel as applied to claims 1 and 18 above and further in view of U.S. Patent 5,682,428 ("Johnson"). This rejection is respectfully but strenuously traversed and reconsideration and a withdrawal of the rejection are hereby respectfully requested.

The Examiner acknowledges that even the combination of Tso et al. and Engel would still fail to meet the Applicant's present invention in that these references fail to disclose decrypting the code. The Examiner therefore applies an additional reference, namely Johnson, which the Office Action considers to disclose decrypting data (citing to col. 27, lines 23-56). The Examiner considers that it would have been obvious to use Johnson's method of decryption in the modified Tso et al. and Engel system of code

scanning and the motivation would have been to be able to reference and manipulate previously encrypted data.

First, for the same reasons as those set forth above, Applicant submits that the rejection of the claims with the further reference of Johnson still fails to teach, suggest or disclose the Applicant's present invention.

Second, Johnson does not disclose as Applicant's claim 12 calls for, a decryption component that receives code that is transferred from the protocol parser that intercepts instant messaging or peer-to-peer code being transmitted through a communications channel. Claim 12 also recites that the code is transferred to the decryption component for decryption and scanning by the proscribed code scanner. Johnson, even if combined with Tso and Engel, still does not teach, suggest or disclose decrypting with a decryption component instant messaging or peer-to-peer code that is being communicated through a communications channel.

Reference to the Johnson citation discloses files, rather than a communications stream. Johnson does not mention a communications stream, but rather seeks to utilize a file identification code to decrypt a file. For these additional reasons, the cited references fail to teach, suggest or disclose the Applicant's claimed invention.

Claims 13-14 and 30-31 stand rejected under 35 USC 103(a) as being unpatentable over modified Tso et al., Engel and Johnson as applied to claims 12 and 26 above and further in view of U.S. Patent 6,389,534 ("Elgamal"). This rejection is respectfully but strenuously traversed and reconsideration and a withdrawal of the rejection are hereby respectfully requested.

Again, with respect to the other claims rejected over the combination that includes Johnson, those claims also relate to instant messaging or peer-to-peer code, and are not taught or disclosed by the cited references.

For the same reasons, the Applicant's invention should also be patentable over the combination of Tso and Johnson, and even with the further combination of Elgamal.

For these reasons, reconsideration and a withdrawal of the rejection is respectfully requested.

Claim 37 stands rejected under 35 U.S.C. 103(a) as being obvious over the modified US Patent 6,088,803 ("Tso"), Engel and Johnson, as applied to claim 30, and the further reference of US Patent Application US 20020087383. This rejection is respectfully but strenuously traversed and reconsideration and a withdrawal of the rejection is hereby respectfully requested.

The Examiner acknowledges in the Office Action that the Tso, Engel and Johnson references all fail to disclose intercepting with said parser a request from one or the other of an original client and an original server for an SSL transfer, creating with said parser a new SSL server that communicated with said client and a new SSL client that communicated with said server, and intercepting with said SSL client and said SSL server communications that occur between said original client and said original server.

The Office Action rejection then looks to and applied Cogger for its supposed teaching of intercepting and decrypting and reencrypting using SSL.

Applicant respectfully traverses the rejection of claim 37. First, the admitted deficiencies of the three combined base references for the reasons above, do not suggest or disclose the present invention.

Second, the cited references would not be consistent with modification of Cogger. The teaching to construct what Applicant regards as its invention in claim 37 is not contained in either of the cited references of Tso, Engel, or Johnson. There is no suggestion for making the claimed invention of Applicant's claim 37 other than the Applicant's own disclosure. Tso related to file downloads, and would not lead one of ordinary skill in the art to make any of the combinations proposed in the rejections set forth in the Office Action, especially the one here which involves creation with a parser of a new SSL server.

Accordingly, it would not have been obvious to arrive at Applicant's invention recited in claim 37. Applicant submits that Elgamel does not even disclose using encryption in a communications stream which is intercepted. As Applicant's claim 37 recites the feature of the present invention wherein communication between client and server in a communications stream utilizes a secure feature, it needs to be noted that claim 37 recites that the SSL is implemented by the parser.

Applicant submits that even the combination including Elgamal and now Cogger, still fails to disclose or suggest the invention as recited in claim 37.

For the above reasons, Applicant's invention is distinguishable over the cited prior art and should be patentable.

The Double Patenting Rejections:

22

Claims 1-8, 10-12, 15-29 and 32-36 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. 7,389,540 in view of Engel. This rejection is respectfully but strenuously traversed and reconsideration and a withdrawal of the rejection is hereby respectfully requested.

For the above reasons, Applicant submits that Engel fails to disclose the present invention, and therefore, the rejection should be traversed. In the event that the double patenting rejection is the last rejection remaining, and is not traversed, Applicant will consider filing a terminal disclaimer.

Claim 9 stands rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. 7,389,540 in view of Moore, et al. – The Office Action likely is referring to Engel-- and further in view of Corliss. This rejection is respectfully but strenuously traversed and reconsideration and a withdrawal of the rejection is hereby respectfully requested.

For the above reasons, Applicant submits that Moore/Engel and Corliss fail to disclose or suggest the present invention, and therefore, the rejection should be traversed. In the event that the double patenting rejection is the last rejection remaining, and is not traversed, Applicant will consider filing a terminal disclaimer.

Claims 13, 14, 30 and 31 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. 7,389,540 in view of Moore, et al. (again likely Engel is meant by the Office Action) in further view of Elgamal. This rejection is respectfully but strenuously traversed and reconsideration and a withdrawal of the rejection is hereby respectfully requested.

For the above reasons, Applicant submits that Moore/Engel and Elgamal fail to disclose or suggest the present invention, and therefore, the rejection should be traversed. In the event that the double patenting rejection is the last rejection remaining, and is not traversed, Applicant will consider filing a terminal disclaimer.\

Claim 37 stands rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. 7,389,540 in view of Engel, Elgamal and Cogger. This rejection is respectfully but strenuously traversed and reconsideration and a withdrawal of the rejection is hereby respectfully requested.

For the above reasons, Applicant submits that Engel, Elgamal and Cogger fail to disclose the present invention, and therefore, the rejection should be traversed. In the event that the double patenting rejection is the last rejection remaining, and is not traversed, Applicant will consider filing a terminal disclaimer.

Claims 1 – 8 and 10-36 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. 7,404,212 in view of Engel. This rejection is respectfully but strenuously traversed and reconsideration and a withdrawal of the rejection is hereby respectfully requested.

For the above reasons, Applicant submits that Engel fails to disclose the present invention, and therefore, the rejection should be traversed. In the event that the double patenting rejection is the last rejection remaining, and is not traversed, Applicant will consider filing a terminal disclaimer.

Claim 9 stands rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. 7,404,212 in view of Engel and further in view of Corliss. This rejection is respectfully but strenuously traversed and reconsideration and a withdrawal of the rejection is hereby respectfully requested.

For the above reasons, Applicant submits that Engel and Corliss fail to disclose or suggest the present invention, and therefore, the rejection should be traversed. In the event that the double patenting rejection is the last rejection remaining, and is not traversed, Applicant will consider filing a terminal disclaimer.

Claim 37 stands rejected on Claim 37 stands rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. 7,404,212 in view of Engel, Elgamal and Cogger. This rejection is respectfully but strenuously traversed and reconsideration and a withdrawal of the rejection is hereby respectfully requested.

For the above reasons, Applicant submits that Engel, Elgamal and Cogger fail to disclose the present invention, and therefore, the rejection should be traversed. In the event that the double patenting rejection is the last rejection remaining, and is not traversed, Applicant will consider filing a terminal disclaimer.
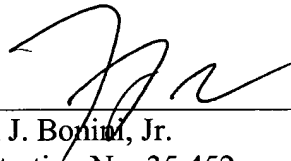

For the above reasons, Applicant's invention is distinguishable over the cited prior art and should be patentable.

If an extension of time is required, the Commissioner is requested to consider this a request for a petition for the appropriate extension of time.

The Commissioner is authorized to charge any additional fees which may be required to Patent Office Deposit Account No. 05-0208.

Respectfully submitted,
HARDING, EARLEY, FOLLMER & FRAILEY
JOHN F. A. EARLEY III
FRANK J. BONINI, JR.
Attorneys for Applicant

Frank J. Bonini, Jr.
Registration No. 35,452
P.O. Box 750
Valley Forge, PA 19482-0750
Telephone: (610) 935-2300

Date: 8/17/09